


B1040 (FORM 1040) (12/15)

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b> <i>Robert and Kathleen Morgenroth</i>	<b>DEFENDANTS</b> <i>Americas Propane Inc</i>	
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) <i>Michael Matthews</i> <i>2015 Boundary Street Suite 303</i> <i>Beaufort SC 29902 843-379-0702</i>	<b>ATTORNEYS</b> (If Known)	
<b>PARTY</b> (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) <div style="text-align: center; font-family: cursive;"> <i>SPAM Violation      11 U.S.C. 362</i>  <i>11 U.S.C. 105</i> </div>		
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<b>FRBP 7001(1) – Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(3) – Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)  <b>FRBP 7001(5) – Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(6) – Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	<b>FRBP 7001(6) – Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) – Injunctive Relief</b> <input checked="" type="checkbox"/> 71-Injunctive relief – imposition of stay <input checked="" type="checkbox"/> 72-Injunctive relief – other  <b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) Declaratory Judgment</b> <input type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
Other Relief Sought		

**B1040 (FORM 1040) (12/15)**

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR <i>Robert and Kathleen Morgenroth</i>	BANKRUPTCY CASE NO. <i>18-06208-55</i>	
DISTRICT IN WHICH CASE IS PENDING <i>South Carolina</i>	DIVISION OFFICE <i>Charleston</i>	NAME OF JUDGE <i>Duncan</i>
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE <i>3-6-2019</i>	PRINT NAME OF ATTORNEY (OR PLAINTIFF) <i>Michael Matthews</i>	

**INSTRUCTIONS**

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

In Re:	)	
	)	
Robert and Kathleen Morgenroth,	)	CASE NO: 18-06208-DD
	)	CHAPTER 7
Debtors,	)	
	)	
Robert and Kathleen Morgenroth,	)	ADVERSARY
	)	PROCEEDING NO.
Plaintiffs,	)	
	)	COMPLAINT
v.	)	
	)	
Amerigas Propane, Inc.	)	
	)	
Defendant.	)	
	)	

**I. FOR A FIRST CAUSE OF ACTION – 11 U.S.C. § 362 STAY VIOLATION**

This is an action by Plaintiffs seeking remedies for Defendant's violations of the automatic stay imposed pursuant to 11 U.S.C. 362(a), including injunctive relief, actual and punitive damages, as well as attorney fee's and costs.

1. Plaintiffs filed for bankruptcy relief under Chapter 7 on December 6, 2018.
2. Plaintiff's Meeting of Creditors was held on February 27, 2019.
3. This is a core proceeding pursuant to 28 U.S.C. § 157.
4. Venue lies in this District pursuant to 28 U.S.C. 1408 & 1409.
5. Defendant is listed as an unsecured creditor on Plaintiff's Schedule E/F.
6. Defendant is listed for notice on the mailing matrix filed within this case.
7. Post-petition, Defendant willfully communicated directly with Plaintiff in an attempt to collect its debt with knowledge of Plaintiff's Chapter 7 case and the Automatic Stay on by letter and/or email on January 7, 2019, January 30, 2019, February 14, 2019, March 1, 2019, and March 4, 2019.
8. Moreover, Defendant has repeatedly called and harassed Plaintiff's (approximately 13 times, often more than once a day) between February 13, 2019 and March 5, 2019.

9. Undersigned, wrote Defendant twice reminding it of Debtor's bankruptcy case and providing information regarding same.
10. Pursuant to 11 U.S.C. § 362 the debtors are protected by the automatic stay upon filing for protection under the Bankruptcy Code. Actions taken in violation of the stay may be sanctioned by the court pursuant to 11 U.S.C. § 105(a) and attorney's fees granted to the aggrieved party.
11. The plaintiffs are informed and believe that they are entitled to damages suffered as a direct consequence of Defendants actions including, but not limited to actual and punitive damages, emotional distress and any other relief deemed appropriate by this Honorable Court.
12. The plaintiffs are further informed and believe that they are entitled to reasonable attorney's fees and costs incurred in the prosecution of this action.

## **II. FOR A SECOND CAUSE OF ACTION – 11 U.S.C. § 362(k) WILLFUL STAY VIOLATION**

13. The plaintiffs reallege each and every allegation stated above.
14. Pursuant to 11 U.S.C. § 362 the debtors are protected by the automatic stay upon filing for protection under the Bankruptcy Code. Actions taken by others with knowledge of the automatic stay trigger the consequences of 11 U.S.C. § 362(k) which provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages."
15. The plaintiffs are informed and believe that the Defendant had knowledge of the presence of the Stay as indicated by notice it received in the Chapter 7 case in addition to the letters sent to it by undersigned. The plaintiffs are informed and believe that they are entitled to damages suffered as a direct consequence of this violation.
16. The plaintiffs are further informed and believe that they are entitled to punitive damages to adequately redress the outrageous violation of the Stay.
17. The plaintiffs are further informed and believe that they are entitled to reasonable attorney's fees incurred in the prosecution of this action.

WHEREFORE, the plaintiffs prays this court issue its order finding the Defendant in violation of the automatic stay pursuant to the 11 U.S.C. § 362 and awarding damages pursuant to 11 U.S.C. § 105(a) and U.S.C. § 362(k) as follows:

1. Damages in an amount to be determined that Plaintiffs suffered as a direct consequence of the creditor's actions;
2. Punitive damages to adequately redress the outrageous actions of the defendant;
3. Reasonable attorney's fees and costs incurred in the prosecution of this action; and
4. Any further relief this court deems just and proper.

Respectfully Submitted,

/s/ Michael Matthews  
Michael Matthews  
Attorney for the Plaintiff  
District Court ID# 10012  
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March 6, 2019